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10/549,504	09/16/2005	Joseph Peter Stefaniak	MV03-041/10/222,000	7693

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EXAMINER
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LEE, WILSON

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/549,504	<b>Applicant(s)</b> STEFANIAK, JOSEPH PETER	
	<b>Examiner</b> Wilson Lee	<b>Art Unit</b> 2163	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5,7-10,12-17,19,21,23-26 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7-10,12-17,19,21,23-26 and 28-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **Continued Examination Under 37 CFR. 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued under 37 CFR 1.114, and fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/7/2009 has been entered.

### **Response to Arguments**

Applicant's arguments filed on 8/7/2009 have been fully considered but they are not persuasive.

Applicant argues that MacGregor's consolidation in paragraph [0008] is not actually consolidating, but is intended to be synonymous with "aggregation" or "grouping".

Examiner is not persuaded.

MPEP § 2106 states Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed Cir. 1997).

MacGregor's *consolidation*, in definition, clearly has the at least following plain meanings of consolidation, aggregation, and grouping, etc. MacGregor's consolidation comprises at least consolidation, aggregation, grouping function which meets the claimed limitation *consolidation*.

Applicant argues that MacGregor fails to teach the consolidation of computing resources as recited in the claims.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., consolidation of computing resources) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that MacGregor fails to teach or suggest that consolidation of computing resources, storing computing device characteristics (i.e., information describing the computing device) in data files, loading computing device characteristics into a relational database, or evaluating computing device characteristics in a relational database for consolidation purposes.

However, applicant has not provided any evidence or explanation to support his argument.

Applicant argues that MacGregor is so far removed from the field of Applicant's invention (computing resource consolidation) as to be irrelevant to the claimed invention.

However, applicant has not provided any evidence or explanation to support his argument.

Applicant is respectfully reminded that, as set forth in MPEP 2131.05, "Arguments that the alleged anticipatory prior art is 'nonanalogous art' or 'teach away

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from the invention' or is not recognized as solving the problem solved by the claimed invention, are not 'germane' to a rejection under 102. 'Twin Disc, Inc v. United States, 231 USPQ 417, 424 (Cl. Ct 1986) (quoting In re Self, 671 F.2d 1344, 213 USPQ 1, 7 (CCPA 1982)). A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. The question whether a reference 'teach away' from the invention is inapplicable to an anticipation analysis. Celeritas Technologies Ltd. V. Rockwell International Corp., 150 F. 3d 1354, 1361, 47 USPQ 2d 1516, 1522-23 (Fed. Cir. 1999)." See also MPEP 706.02(b) as to ways to overcome a rejection under 35 U.S.C. 102.

### **Claim Rejections – 35 U.S.C. 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3, 5, 7-10, 12-17, 19, 21, 23-26, 28-32 are rejected under 35 U.S.C.

112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In Claim 1, "the consolidation resulting in the moving of at least one of the services to a computing device other than the computing device providing the service" has not been taught in the specification to enable one skilled in the art to make or use the invention.

In Claim 17, “the consolidation resulting in the moving of at least one of the services to a computing device other than the computing device providing the service” has not been taught in the specification to enable one skilled in the art to make or use the invention.

Claims 3, 5, 7-10, 12-16, 19, 21, 23-26, 28-32 are rejected because of their dependency on claims 1 and 17.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5, 7-10, 12-17, 19, 21, 23-26, 28-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 1, lines 3, 5, 9, 11, 12, “the services” lacks antecedent basis. And line 11, “a computing device” is vague whether it refers to the previous claimed “first computing device” or “second computing device”.

In Claim 17, line 3, 6, 12, 14, 15, “the services” lacks antecedent basis. And line 14, “a computing device” is vague whether it refers to the previous claimed “first computing device” or “second computing device”.

Claims 3, 5, 7-10, 12-16, 19, 21, 23-26, 28-32 are vague by virtue of their dependency on claims 1 and 17.

### **Claim Rejections – 35 U.S.C. 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 3, 5, 7-10, 12-17, 19, 21, 23-26, 28-32 are rejected under 35 U.S.C. 102(e) as being anticipated by MacGregor et al. (US2005/0102382).

Regarding Claim 1, MacGregor (US2005/0102382) discloses a method for use in consolidating computing devices (See Abstract, figs. 2, 4, 5), comprising:

storing in at least two data sets (Abstract, [0018]-[0024], [0031], [0036]-[0039], [0048]), the at least two datasets each comprising information indicative of the characteristics of the services provided by at least a first computing device and a second computing device (See figs. 2, 4, 5), wherein the datasets describe the information in a markup language ([0031], [0037]), and wherein the service characteristics comprise at least one of: system parameters (See [0020]. The management interface manages the terminal, network, protocol. These elements control the connectivity of the network; consolidation of network events, [0008]), executable process parameters (See [0030]. The server provides security access

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control for network user. Therefore, the user or owner must provide identifications to the server for determining whether the access is granted or not), and computing device database definition parameters (Abstract, [0022]), user messages ([0034]), defaults ([0037], [0042], Type of network element);

loading the at least two datasets into a database ([0031]) so that the at least two datasets can be compared ([0031]. Since some certain parameters can be more important, the parameters of the data sets are inherently compared in order to find the importance) to each other to facilitate consolidation of services performed on at least one of the computing devices (Abstract, [0008]), the consolidation (e.g. consolidation of network events) resulting in the moving of at least one of the services (e.g. consolidation of network events) (paragraph [0008]) to a computing device (user device) other than the computing device providing the service (since it is the management server provides the services, not the user device).

Regarding Claim 3, MacGregor discloses that the markup language is XML (See [0031], [0037]).

Regarding Claim 5, MacGregor discloses that the system parameters comprise at least network connectivity (See [0020]. The management interface manages the terminal, network, protocol. These elements control the connectivity of the network), disk space ([0029]).

Regarding Claim 7, MacGregor discloses the executable process parameter comprises at least process owner (See [0030]. The server provides security access

control for network user. Therefore, the user or owner must provide identifications to the server for determining whether the access is granted or not.)

Regarding Claim 8, MacGregor discloses that the relational database ([0031]) inherently comprises a table (See Microsoft computer dictionary) for maintaining system information for the at least one computing device (such as storing information).

Regarding Claim 9, MacGregor discloses that the relational database ([0031]) inherently comprises a table (See Microsoft computer dictionary) wherein the table maintains information related to executable processes on a computing device (such as storing information related to access control to authenticated users to run the software for communicating the network).

Regarding Claim 10, MacGregor discloses that the relational database ([0031]) inherently comprises a table (See Microsoft computer dictionary) wherein the table contains information related to modules (any software, e.g. windows, c++, java, network, internet, etc) on a computing device (See [0036]) that are used by a process (all software run by process).

Regarding Claim 12, MacGregor discloses the computing devices database definition parameters comprises at least function (Abstract, [0022]), user messages ([0034]), defaults ([0037], [0042], Type of network element), stored procedure (procedure that run the software), triggers ([0037]).

Regarding Claim 13, MacGregor discloses the relational database inherently comprises a database name table (See Microsoft computer dictionary) for maintaining the names of the computing device database ([0037], [0040]-[0042]. Since all data are

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stored in the table of the database, the names of the user, server, cell are stored in the table as well). Further, MacGregor discloses that tables are within database ([0048])

Regarding Claim 14, MacGregor's database inherently discloses the table maintains computing device database names ([0037], [0040]-[0042]. Since all data are stored in the table of the database, the names of the user, server, cell are stored in the table as well). Further, MacGregor discloses that tables are within database ([0048]).

Regarding Claim 15, MacGregor discloses the database inherently comprises column table maintaining column names (e.g. attribute names) (See Microsoft computing dictionary).

Regarding Claim 16, since the computer code or program must be stored in the database before execution, therefore MacGregor database inherently comprises a table of storing or containing trigger ([0046], claim 11), function (abstract, [0040], [0041]), procedure (procedure or process to execute or run any software).

Regarding Claim 17, MacGregor discloses a system for comparing computing device parameters (See Abstract, figs. 2, 4, 5, [0019]-[0023]), comprising:

at least one storage device storing at least two datasets (Abstract, [0018]-[0024], [0031], [0036]-[0039], [0048]), the at least two datasets each comprising information indicative of the characteristics of the services provided by at least a first computing device and a second computing device (See figs. 2, 4, 5), wherein the dataset files describe the information in a markup language ([0031], [0037]), and wherein the service characteristics comprise at least one of: system parameters (See [0020]. The management interface manages the terminal, network, protocol. These elements

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control the connectivity of the network; consolidation of network events, [0008]), executable process parameters (See [0030]. The server provides security access control for network user. Therefore, the user or owner must provide identifications to the server for determining whether the access is granted or not), and computing device database definition parameters (Abstract, [0022]), user messages ([0034]), defaults ([0037], [0042], Type of network element);

a database ([0031]) having tables configured to accept data from the data set files (0048)); and,

a set of computer-readable instruction capable of loading the data from the at least two datasets into the tables of the database ([0031], [0048]) so that the at least two datasets can be compared ([0031]. Since some certain parameters can be more important, the parameters of the data sets are inherently compared in order to find the importance) to each other to facilitate consolidation of services (e.g. consolidation of network events) performed on at least one of the computing devices, the consolidation e.g. consolidation of network events) (paragraph [0008]) resulting in the moving of at least one of the services to a computing device (user device) other than the computing device providing the service (since it is the management server provides the services, not the user device).

Regarding Claim 19, MacGregor discloses that the markup language is XML (See [0031], [0037])

Regarding Claim 21, MacGregor discloses that the system parameters comprises at least network connectivity (See [0020]. The management interface

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manages the terminal, network, protocol. These elements control the connectivity of the network), disk space ([0029]).

Regarding Claim 23, MacGregor discloses the executable process parameter comprises at least process owner (See [0030]. The server provides security access control for network user. Therefore, the user or owner must provide identifications to the server for determining whether the access is granted or not.)

Regarding Claim 24, MacGregor discloses that the relational database ([0031]) inherently comprises a table (See Microsoft computer dictionary) for maintaining system information for the at least one computing device (such as storing information).

Regarding Claim 25, MacGregor discloses that the relational database ([0031]) inherently comprises a table (See Microsoft computer dictionary) wherein the table maintains information related to executable processes on a computing device (such as storing information related to access control to authenticated users to run the software for communicating the network).

Regarding Claim 26, MacGregor discloses that the relational database ([0031]) inherently comprises a table (See Microsoft computer dictionary) wherein the table contains information related to modules (any software, e.g. windows, c++, java, network, internet, etc) on a computing device (See [0036]) that are used by a process (all software run by process).

Regarding Claim 28, MacGregor discloses the computing devices database definition parameters comprises at least function (Abstract, [0022]), user messages ([0034]), defaults ([0037], [0042], Type of network element), triggers ([0037]).

Regarding Claim 29, MacGregor discloses the relational database inherently comprises a database name table (See Microsoft computer dictionary) for maintaining the names of the computing device database ([0037], [0040]-[0042]. Since all data are stored in the table of the database, the names of the user, server, cell are stored in the table as well).

Regarding Claim 30, MacGregor's database inherently discloses the table maintains computing device database names ([0037], [0040]-[0042]. Since all data are stored in the table of the database, the names of the user, server, cell are stored in the table as well). Further, MacGregor discloses that tables are within database ([0048]).

Regarding Claim 31, MacGregor discloses the database inherently comprises column table maintaining column names (e.g. attribute names) (See Microsoft computing dictionary).

Regarding Claim 32, since the computer code or program must be stored in the database before execution, therefore MacGregor database inherently comprises a table of storing or containing trigger ([0046], claim 11), function (abstract, [0040], [0041]), procedure (procedure or process to execute or run any software).

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Wilson Lee whose telephone number is (571) 272-1824.

Papers related to the application may be submitted by facsimile transmission. Any transmission not to be considered an official response must be clearly marked "DRAFT". The official fax number is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9-22-09

/Wilson Lee/  
Primary Examiner, Art Unit 2163